

Montana Water Court  
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**FILED**  
06/30/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0886-R-2022  
Lambert, Kathryn  
6.00

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Alison R. Hagerman; Brian D. Hagerman

**CASE 43B-0886-R-2022**

43B 114720-00

43B 114721-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

These claims each appeared in the Preliminary Decree with the following issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE LOT 3 SEC 36 TWP 1N RGE 15E SWEET GRASS COUNTY.

These remarks were not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA. Under

Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

The December 6, 2022 Order Consolidating Case And Setting Deadlines Pursuant To Section 85-2-248(5), MCA set a January 6, 2023 deadline for Alison R. Hagerman and Brian D. Hagerman to contact the DNRC Office [“DNRC”] and a March 6, 2023 deadline to file documentation resolving the issue remarks. Nothing was filed by Alison R. Hagerman and Brian D. Hagerman.

On March 10, 2023 the DNRC Memorandum was filed stating that neither claimant contacted the DNRC. The DNRC Memorandum recommends a change to the point of diversion legal description for each claim. The March 30, 2023 Order Setting Filing Deadline Pursuant To Section 85-2-248, MCA set an April 19, 2023 deadline for Alison R. Hagerman and Brian D. Hagerman to file documentation stating whether or not they agreed with the DNRC Memorandum recommendations. Nothing was filed. The April 24, 2023 Order Entering Defaults was issued pursuant to section 85-2-248, MCA, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R. It states the Court will proceed with implementing the recommendations in the DNRC Memorandum. These documents are viewable in the Court’s FullCourt Enterprise case management system.

#### APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. For both claims, the Preliminary Decree states that the point of diversion legal

description is the SWSWNE section 36, T1N, R15E, SWEET GRASS. The legal description should be GOV'T LOT 3, SWSWNE section 36, T1N, R15E, SWEET GRASS. The issue remark should be removed from each claim as resolved.

2. The Preliminary Decree also includes the following remark on each claim:

THE TIMELY FILED OBJECTION OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WAS AMENDED BY AGREEMENT OF THE CLAIMANT TO INCLUDE POINT OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

These remarks provide notice of these changes made during the Temporary Preliminary Decree proceedings. The remarks do not raise unresolved issues which need to be addressed. There are no proceedings required for these remarks. The remarks should be removed as having served their notice purposes.

#### CONCLUSION OF LAW

The DNRC Memorandum is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (9), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

#### **Service via USPS Mail:**

Alison R. Hagerman  
Brian D. Hagerman  
PO Box 97  
Grey Cliff, MT 59033

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 114720-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** BRIAN D HAGERMAN  
PO BOX 97  
GREY CLIFF, MT 59033  
  
ALISON R HAGERMAN  
PO BOX 97  
GREY CLIFF, MT 59033

**Priority Date:** MARCH 29, 1954  
**Type of Historical Right:** FILED  
**Purpose (use):** IRRIGATION  
**Irrigation Type:** SPRINKLER/FLOOD  
**\*Flow Rate:** 5.48 CFS  
**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.  
**Climatic Area:** 2 - MODERATELY HIGH  
**\*Maximum Acres:** 144.60  
**\*Source Name:** YELLOWSTONE RIVER  
**Source Type:** SURFACE WATER  
**\*Point of Diversion and Means of Diversion:**

| <u>ID</u>   | <u>Govt Lot</u> | <u>Qtr Sec</u>  | <u>Sec</u>     | <u>Twp</u> | <u>Rge</u> | <u>County</u> |               |
|---|-----------------|-----------------|----------------|------------|------------|---------------|---------------|
| 1   | 3               | SWSWNE          | 36             | 1N         | 15E        | SWEET GRASS   |               |
| <b>Period of Diversion:</b> APRIL 1 TO NOVEMBER 1 |                 |                 |                |            |            |               |               |
| <b>Diversion Means:</b> PUMP                      |                 |                 |                |            |            |               |               |
| <b>Period of Use:</b> APRIL 1 TO NOVEMBER 1       |                 |                 |                |            |            |               |               |
| <b>*Place of Use:</b>                             |                 |                 |                |            |            |               |               |
| <u>ID</u>   | <u>Acres</u>    | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u>    | <u>County</u> |
| 1   | 44.10           |                 | NE             | 36         | 1N         | 15E           | SWEET GRASS   |
| 2   | 32.00           |                 | SE             | 36         | 1N         | 15E           | SWEET GRASS   |
| 3   | 68.50           |                 | NW             | 36         | 1N         | 15E           | SWEET GRASS   |
| <b>Total:</b>                                     | 144.60          |                 |                |            |            |               |               |

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

114720-00

114721-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 114721-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** BRIAN D HAGERMAN  
PO BOX 97  
GREY CLIFF, MT 59033  
  
ALISON R HAGERMAN  
PO BOX 97  
GREY CLIFF, MT 59033

**Priority Date:** OCTOBER 1, 1951  
**Type of Historical Right:** FILED  
**Purpose (use):** IRRIGATION  
**Irrigation Type:** SPRINKLER/FLOOD  
**Flow Rate:** 5.00 CFS  
**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.  
**Climatic Area:** 2 - MODERATELY HIGH  
**\*Maximum Acres:** 144.60  
**\*Source Name:** YELLOWSTONE RIVER  
**Source Type:** SURFACE WATER  
**\*Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1         | 3               | SWSWNE         | 36         | 1N         | 15E        | SWEET GRASS   |

**Period of Diversion:** APRIL 1 TO NOVEMBER 1

**Diversion Means:** PUMP

**Period of Use:** APRIL 1 TO NOVEMBER 1

**\*Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1         | 44.10        |                 | NE             | 36         | 1N         | 15E        | SWEET GRASS   |
| 2         | 32.00        |                 | SE             | 36         | 1N         | 15E        | SWEET GRASS   |
| 3         | 68.50        |                 | NW             | 36         | 1N         | 15E        | SWEET GRASS   |

**Total:** 144.60

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**Remarks:**

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114720-00

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